

## SECOND 15-DAY COMMENT PERIOD

3-1	<p>DPR's plan to replace the measurement-based 270,000-pound monthly township cap with an undefined approach that uses "permit guidance as well as other mitigation options" in an attempt to ensure that monthly ambient air concentrations of methyl bromide remain below 9 ppb is flawed. This approach would require extensive monitoring to track methyl bromide levels in all locations of high methyl bromide use, an unrealistic scenario at best. The real problem with this approach is that the average monthly ambient air concentrations would only be known after the month in question has elapsed and the exposure has already occurred.</p> <p><b><i>The Department of Pesticide Regulation (DPR) and county agricultural commissioners (CACs) will implement enforceable requirements to ensure air concentrations do not exceed nine ppb. It's likely that the township cap of 270,000 will remain the primary method, but not the only method to ensure air concentrations do not exceed 9 ppb. Alternatives include increasing the size of the buffer zone or allocating methyl bromide use.</i></b></p>	7B
3-2	<p>The 270,000-pound cap should be left in place until the peer review of the correlation study between methyl bromide use and concentrations in air has been completed. Monitoring in addition to the township cap would be the most useful. The proposed regulation will not protect residents in areas of high methyl bromide use.</p> <p><b><i>The 270,000-pound township cap has not been peer reviewed, even though DPR initiated the process in the fall of 2003. DPR cannot implement a scientifically based regulation, such as the township cap without a peer review pursuant to Health and Safety Code section 57004.</i></b></p>	7B
3-3	<p>Proposed revision to section 6450(h) fails to meet the Office of Administrative Law's clarity standard. Without a specifically designated township cap, the public will be unclear as to what standard applies.</p> <p><b><i>DPR disagrees. In order to ensure that adequate subchronic restrictions are implemented, DPR is establishing a performance-based standard instead of a prescriptive standard, while still continuing to protect the public from any possible subchronic methyl bromide exposure. Placing the peer-reviewed health standard in regulation will allow DPR to address many concerns raised during the comment period, including the ability to meet the target value by other means such as larger buffer zones or by limiting the amount of methyl bromide in geographic areas smaller than townships. Under this change, DPR intends to limit methyl bromide to 270,000 pounds in a township per calendar month through permit guidance as well as other mitigation options.</i></b></p>	7B

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3-4	<p>The 9 ppb level is not sufficiently protective.</p> <p><i>See response in Attachment B-#47.</i></p>	7B
3-5	<p>The proposal in section 6450.2 has been further loosened to give the counties the authority to approve smaller buffer zone sizes of shorter duration than those specified by DPR without even the requirement to consult with the Director prior to approving these weakened protections. We disagree with the conclusion that this oversight provision is unnecessary, potentially confusing and redundant to existing policies regarding interaction between the CACs and the Department.</p> <p><i>See response to comment #47.</i></p>	7B
3-6	<p>Removing the mandatory consultation in section 6450.2, actually creates confusion. Neither the regulated industry, neighbors, nor the general public will be clear on what the buffer zone sizes and durations will be if that determination is left to the whim of the CACs to change based on unspecified and undefined "other information." By failing to define in the regulations what type of "other information" would justify a deviation from the standard set by DPR. OAL would reject based on lack of clarity, uncertainty, and vagueness.</p> <p><i>See response to comment #47.</i></p>	7B
3-7	<p>The process for getting approval from the director for applications of greater than 40 acres is unclear. We would need to know what information would be required for the Director to make a decision. Also, there should be a time limit (e.g., 7 days) on the Director to respond to requests.</p> <p><i>DPR will describe the needed information in guidance to CACs. The time it takes for DPR to respond will depend on the complexity of the fumigation, including the size of the field. If DPR cannot respond in a timely manner, the fumigation can proceed by breaking up the field into blocks of 40 acres or less.</i></p>	8B
3-8	<p>We support the amendment eliminating the 270,000 pound acreage township cap, in lieu of requiring the CACs to regulate to the 9 ppb exposure level.</p> <p><i>DPR agrees.</i></p>	9B

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3-9	<p>The proposed revision to require the DPR to ensure that ambient air concentrations of methyl bromide do not exceed an average daily non-occupational exposure of nine parts per billion in a calendar month is not adequate. These rates of measure are a non-sensical "replacement" for the proposed limit of poundage within a calendar month time-frame. Using the measurements of an average daily exposure rate combined with, or occurring in, a calendar month are not sufficient to ensure public safety. Under this scenario, the exposure rates on the initial fumigation day, or within the first few days, could be much significantly higher than subchronic exposure rates, as long as, over a calendar month's time, it averages out to no more than 9 part per billion daily. Getting seriously exposed on one or two days is obviously unacceptable even as long as there is little or no exposure for another 28 - 30 days. The regulation needs to require exposure rates to be measured within a 12 or 24 hour period, not averaged daily over such an incredibly long period of time. I understand this to be a fairly standard exposure rate of measure for many toxic chemicals.</p> <p><i>Buffer zones, work hour limitations, and most of the other provisions in the regulations provide protection for exposures of 24 hours or less.</i></p>	11B
3-10	<p>We have a problem with the 9 ppb level, which is derived from an improper risk assessment determination of a 5 ppm NOEL.</p> <p><i>See response in Attachment B.</i></p>	9B
3-11	<p>The 270,000 pound limit on the amount of methyl bromide which could be applied in a township is completely unfounded and unnecessary.</p> <p><i>See response to comment #24.</i></p>	9B
3-12	<p>Eliminating the express requirement that CACs specifically consult with the Director regarding any modification from these regulations is meritorious.</p> <p><i>No response necessary.</i></p>	9B

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3-13	<p>Comments addressing sections 6450.2(i), 6450.2(b), and 6784(b)(2)(C).</p> <p><b><i>The comments are not relevant to the changes proposed during the second 15-day comment period – no response necessary.</i></b></p>	9B
3-14	<p>There is no basis for adding "supervising the fumigation operation" to the fumigation-handling activities.</p> <p><b><i>The comment is not relevant to the changes proposed during the second 15-day comment period – no response necessary. However this comment has been addressed in a memorandum to California Department of Food and Agriculture, dated April 15, 2004, during the consultation requirements specified in FAC section 11454.2, and the February 6, 1992, memorandum of agreement which was developed as provided in section 11454.2.</i></b></p>	8B
3-15	<p>There is no definition as to what constitutes supervising the fumigation operation.</p> <p><b><i>See response to comment #3-13.</i></b></p>	8B, 10B
3-16	<p>The prohibition of the use of films less permeable than the stand defined in section 6540(e) negates the incentive of industry to develop new and better films.</p> <p><b><i>The comment is not relevant to the changes proposed during the second 15-day comment period – no response necessary.</i></b></p>	8B
3-17	<p>Notification of property owners outside the outer buffer zone, as specified in section 6450.1(b), is not necessary because DPR has determined that there is no risk.</p> <p><b><i>The comment is not relevant to the changes proposed during the second 15-day comment period – no response necessary.</i></b></p>	8B
3-18	<p>Propose adding section 6450(e)(3)(C) to allow growers to prepare the ground located in the inner buffer zone for subsequent fumigation with the operator of the equipment wearing approved respiratory protection.</p> <p><b><i>The comment is not relevant to the changes proposed during the second 15-day comment period – no response necessary.</i></b></p>	8B

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3-19	<p>Section 6450.3(b) is ambiguous as it is currently worded.</p> <p><i>The comment is not relevant to the changes proposed during the second 15-day comment period – no response necessary.</i></p>	8B
3-20	<p>The applicator can't be responsible for training and/or record keeping for someone who is not any employee.</p> <p><i>The comment is not relevant to the changes proposed during the second 15-day comment period – no response necessary.</i></p>	8B
3-21	<p>Section 6784(b)(3)(A) is not worded correctly.</p> <p><i>The comment is not relevant to the changes proposed during the second 15-day comment period – no response necessary.</i></p>	8B, 10B
3-22	<p>Section 6450.3(b) obligates the property operator to assure only persons who can be in the application block during the restricted entry interval are those performing fumigation-handling activities. This is likely to raise problems relative to irrigators, etc.</p> <p><i>The comment is not relevant to the changes proposed during the second 15-day comment period – no response necessary.</i></p>	9B
3-23	<p>Why would you remove a genuine protection procedure by no longer requiring the CAC to seek approval from the director for decisions of deviation concerning size of buffer zones and duration.</p> <p><i>See response to comment #3- 6.</i></p>	3B
3-24	<p>I find the limit of 270,000 pounds in a township during a calendar month completely unacceptable.</p> <p><i>DPR has modified the text to require DPR to ensure that ambient air concentrations of methyl bromide do not exceed an average daily nonoccupational exposure of nine ppb in a calendar month. This replaces the proposed limit of 270,000 pounds of methyl bromide used in any township in any calendar month.</i></p>	6B

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3-25	<p>Concerned about the new regulations allowing a dangerous chemical like methyl bromide to be applied to the citizenry and their crops.  Do not allow any reduction in regulation of this dangerous pesticide.  Methyl bromide is a chemical that the rest of the world is intent on banning. The U.S. is fighting that ban, and is trying to expand the use of methyl bromide.  Stop making methyl bromide and using it.</p> <p><i>Comments not specifically directed at the proposed action - no response necessary.</i></p>	1B, 2B, 4B, 5B
	<p>The safety levels sought by the regulatory program and safeguards are overly restrictive and with scientific merit. DPR's position of 5 ppm has little support from creditable scientists.</p> <p><i>The comment is not relevant to the changes proposed during the 15-day comment period – no response necessary.</i></p>	33A